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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/29/B/15-RA/5761

Date of Issue 17.09.2021

ORDER NO.204/2021/CUS (WZ)/ASRA/MUMBAI DATED 26.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Basheer Mohammed Abdul Rahiman

Respondent : Pr. Commissioner of Customs, Mumbai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Mum - CUSTM -PAX -APP -688 &689/14-15 dated 16.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Shri Basheer Mohammed Abdul Rahiman (herein referred to as Applicant) against the Order-in-Appeal No. Mum -CUSTM -PAX -APP- 688 & 689/14-15 dated 16.03.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 18.07.2013 the officers of AIU intercepted the Applicant at the domestic transfer area of the International Airport after he had cleared the green channel. An examination of his person resulted in the recovery of two gold bars from his jacket worn by him, totally weighing 232 gms, valued at Rs. 5,83,898/- (Rupees Five lakhs Eighty three thousand Eight hundred and Ninety eight). The examination of his baggage resulted in the recovery of 43 cartons of cigarettes valued at 34,400/- (Rupees Thirty four thousand Four hundred.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/94/2013-14 dated 13.03.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes and imposed penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) under Section 112 (a) and (b) of the Customs Act,1962 on the respondent. A penalty of Rs. 10,000/- (Rupees Ten thousand) was also imposed under Section 114AA of the Customs Act,1962

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. Mum -CUSTM -PAX -APP -- 688 & 689/14-15 dated 16.03.2015 rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The impugned order passed by the Respondent is bad in law and unjust.

5.2. The Applicant submits that the impugned order has been passed without giving due consideration to the documents on record and facts of the case.

5.3 The Appellant authority ought to have appreciated the goods brought in by the Applicant are not prohibited.

5.4 The Appellant authority ought to have appreciated that the Applicant had claimed the ownership of the goods.

5.5 The Appellant authority ought to have appreciated that the Gold was not concealed but was found on his person.

5.6 The Appellant authority ought to have appreciated th was for the first at it time that the Applicant had brought in the impugned goods.

5.7 The Appellant authority ought to have appreciated that in similar of cases, the authorities have released the goods on fine and enalty type under Section 125 of the Customs Act, 1962.

5.8 The Applicant submits that in view of the aforesaid submissions, the impugned order deserves to be set aside.

5.9 The Applicant craves to add, alter and amend any of the grounds mentioned.

5.10 The Applicant will rely on such judgments or other documentary evidence as may be deemed necessary at the time of hearing. The Applicant, therefore, humbly prays that the impugned order-in-original passed by the Respondent may kindly be set aside and goods may kindly be released under Section 125 of the Customs Act, 1962, on terms and conditions as deemed fit and proper by your honour. The Personal Penalty may kindly be reduced substantially. For such other & further orders as your Good self may deem fit and proper in the facts and circumstances of the case.

6. Accordingly personal hearings in the case were scheduled on 16.03.2021, 23.03.2021, 20.04.2021 and 27.04.2021. However neither the Applicant department nor the respondent in the case attended the scheduled hearings. The case is therefore being decided on basis of available records on merits.

7. The Government has gone through the facts of the case, and notes that it is an uncontested fact that the goods ie 2 gold bars and cigarettes were not declared to the customs under Section 77 of the Act and the passenger passed through the green channel. Had he not been intercepted he would have walked away with the impugned goods evading customs duty the confiscation of the gold is therefore justified.

8. The Applicant has pleaded for the impugned gold jewelry to be allowed redemption. In the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Government also notes that even prohibited goods can also be allowed for redemption at the discretion of the judicial authority. This general principle has been relied in catena of cases by higher courts. Under the circumstances the Government opines that the order of absolute confiscation in the impugned case is harsh and unjustified. The penalty imposed is also almost 50% of the value of the gold. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed redemption on suitable redemption fine and penalty.

9. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI states " *.....when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercised cannot be based on private opinion.....for that matter, all the facts and all relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken* " The original adjudicating authority has absolutely confiscated the gold bars treating it as concealment. The Appellate authority has

upheld the order of the lower authority. The absolute confiscation, leading to dispossession of the gold to the Applicant is harsh and unjustified. Government notes that though the Applicant is a frequent traveller there is no past history of such offence/violation by the Applicant. Contrary to the Original adjudicating authority observations the Applicant has asserted that he used to bring goods other than gold within imposed limits. The impugned gold was not concealed ingeniously. The applicant claims ownership of the gold and its ownership is not disputed. The quantity of gold is small and not commercial in nature. Government opines that while the gold bars are liable for confiscation, absolute confiscation is unwarranted, a more reasonable approach would be to allow redemption on suitable fine and penalty.

10. In view of the above Government is inclined to take a reasonable view in the matter and sets aside the impugned orders of the Appellate authority in respect of the impugned gold. The impugned gold bars weighing 232 gms, valued at Rs. 5,83,898/- (Rupees Five lakhs Eighty three thousand Eight hundred and Ninety eight) is allowed redemption on payment of Rs.2,00,000/- (Rupees Two lakhs). The penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) under Section 112 (a) of the Customs Act,1962 is also reduced to Rs.1,50,000/- (Rupees One lakh Fifty thousand).

11. Revision Application is disposed of on above terms.


26/8/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.204/2021 -CUS (WZ) /ASRA/

DATED 08.2021

To,

1. Shri Basheer Mohammed Abdul Rahiman S/o Mr. Mohammed Abdul Rahiman, R/o 23/256 Zuhra Manzil, Nechipadappu, P.O. Thalangara, Kasargod Kerela.
2. The Pr. Commissioner of Customs, CSI Airport, Sahar, Mumbai.

Copy to:

1. Shri N.J. Heera, Advocate, Nulwala bldg., Mint Road, Opp. G.P. O. , Fort, Mumbai 400 001
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.